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Technology Center 2100

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In re Application of: Golestani)
Application No.: 09/327,347) **DECISION ON PETITION TO**
Atty Docket No.: Golestani 3) **WITHDRAW THE HOLDING OF**
Filed: June 5, 1999) **UNDER 37 CFR §1.181**
For: END-TO-END INTERNET)
CONGESTION CONTROL)

This decision is in response to the filing of a petition to withdraw a holding of abandonment and a notice of appeal filed May 6, 2003 (with a certificate of mailing dated May 1, 2003). The original communication filed February 26, 2003, requesting withdrawal of the notice of abandonment was treated as a petition under 37 CFR §1.8(b) to accept correspondence as timely filed and was dismissed April 1, 2003. This application was held abandoned for failure to file a response in a timely manner to the Office action mailed on June 6, 2002 (Paper No. 8).

Applicable Prosecution History

June 6, 2002	Final Rejection mailed (Paper No. 8) with incorrect fax number included in Office action (703) 308-9051
Sept 27, 2002	USPTO Auto-Reply generated for fax received at 3:24 (24 pages including cover page) and 3:33 PM (5 pages including cover page) as evidenced by copies provided by petitioner
Jan 8, 2003	Practitioner contacted regarding status of application
Feb 11, 2003	Practitioner faxed in 30 pages plus cover letter pursuant to examiner's request
Feb 26, 2003	Petition filed with copy of after final amendment
Mar 4, 2003	Notice of Abandonment mailed indicating the proposed reply received on "2-10-02" [sic] does not constitute a proper reply under 37 CFR 1.113(a) to the final rejection

Issues

In the renewed petition, applicant's representative states the "primary cause for the abandonment was the operational breakdown within the PTO that lost, misplaced, or misfiled applicant's Office Action response." Petitioner has also submitted a new copy of the after final amendment, and a notice of appeal.

Decision

Reviewing the originally submitted papers, *en total*, it was difficult to discern what papers were filed and what the total submission was intended to be on September 27, 2002.

- The USPTO Auto-Reply shows 24 pages + 5 pages (including cover pages) or **27 total pages**.
- Applicant's cover pages reflect a hand annotated "Cover +26" for both transmissions on Sept 27, but with an additional annotation of "Transmission error skipped last three pages. These are included herein" without a signature by their author.
- Counting the pages mentioned in the informal note to the examiner shows the Mr. Brendzel believed he sent 24 pages of the amendment and a transmittal form or **25 pages** on September 27, 2002. (That same informal note to the examiner indicated no "Auto-Reply" was available for the first transmission, but there appears to be two different Auto-Reply's which accompanied the petition.)
- The copy of Applicant's Transmittal Form with the "Certificate of Facsimile" dated September 27, 2002 has "24" changed to "25" by an unknown editor.

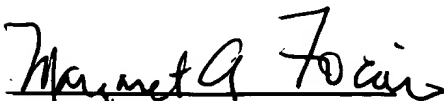
Therefore, the record was unclear whether the applicant submitted 25, 26 or 27 pages (excluding cover pages) on September 27, 2002. Assuming the Office's Auto-Reply is the truth, the number of pages appears to be 27 pages. Assuming the complete after final amendment was received, that accounts for 24 pages. The transmittal form submitted has a "certificate of facsimile" dated September 27, 2002 that is accepted as another of the papers for a total of 25 pages. The practitioner's statements regarding an operational breakdown within the USPTO appear to have been at least partially induced by the practitioner's own facsimile practices.

However, for purposes of this decision, the Office will accept the practitioner's statement that the paper that accompanies the current petition was a true copy of the after final amendment faxed to the USPTO on September 27, 2002 along with a request for an extension of time. Therefore, the papers were timely filed.

However, as indicated in the earlier decision and as annotated in the Notice of Abandonment (Paper No. 10), the proposed reply did not constitute a proper reply under 37 CFR § 1.113(a) to the final rejection because the amendment did not place the application in condition for allowance. The filing of a Notice of Appeal with this petition is not considered timely and therefore does not constitute a proper reply under 37 CFR § 1.113(a). Attached herewith is a copy of an advisory action.

Therefore, the petition is **DENIED**. The application is held to be properly abandoned.

The application file is being forwarded to the Office of Petitions to consider petitioner's request in the alternative of consideration of a petition to revive an abandoned application under 37 CFR § 1.137. Any inquiries related to this decision should be directed to Special Programs Examiner Josie Ballato at (703) 308-0269.



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Attachment: Advisory Action